IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 185 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHAMMED HANIF GULAMNABI MEMON - Applicant(s)
Versus
HARISHANKARSINH COMPETENT AUTHORITY & DY CONSE & 1 - Respondent(s)

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Appearance :

MR MAHESH BHAVSAR for Applicant(s) : 1,
None for Respondent(s) : 1,
MR MR MENGDEY, APP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/10/2007

ORAL JUDGMENT

The petitioner herein challenges an order dated 24th September 1993 passed by the competent authority

and the Deputy Conservator of Forests, Sabarkantha at Himatnagar as upheld by the order dated 29th December 2001 passed by the learned Sessions Judge, Sabarkantha.

2. A truck bearing registration No.GJ-2T-6853 of which the petitioner was the registered owner was found carrying prohibited forest produce. Proceedings for such breach, therefore, came to be initiated by the forest authorities. Ultimately, the Deputy Conservator of Forest in his impugned order came to the conclusion that the truck was actually involved in such illegal activity. The authority, therefore, ordered confiscation of the forest produce as well as the truck used in such transport. The petitioner, therefore, preferred appeal before the learned Sessions Judge which came to be dismissed by the above mentioned order. The petitioner is, therefore, before this Court challenging those orders.

3. Having heard the learned advocate Mr.Bhavsar for the petitioner and learned APP Mengdey for the State, I am inclined to accept the contention of the counsel for the petitioner that considering the value of the forest produce alleged to have been transported, confiscation of the entire truck was not justified. It was submitted that the authorities ought to have provided payment of fine in lieu of confiscation of the truck. He pointed out that the goods involved were valued at Rs.61,000/-. He,

therefore, submitted that confiscation of the truck which was valued about Rs.2,82,000/- was extremely harsh.

4. I find that the impugned order requires modification in this regard. Therefore, the impugned order is modified by providing that in lieu of confiscation, it will be open for the petitioner to pay fine of equal amount of forest produce, i.e. Rs.61,000/-. Learned APP Shri Mengdey pointed out that there was no stay granted by this Court and therefore, it is possible that the truck might have been auctioned. In such a case, this order will operate in a manner that if upon auction the authorities have been able to realize any amount in excess of Rs.61,000/- by sale of truck, the excess amount shall be refunded to the petitioner.

5. In view of the above directions, the impugned orders stand modified to the above extent. Rule is made absolute accordingly.

(Akil Kureshi, J.)

(vjn)